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HONOLULU, H. T., TUESDAY, OCTOBER 13, 1903—SEMI-WEEKLY.

WHOLE No. 2529.

JUDGE ESTEE CHARGES FEDERAL GRAND JURY

He Instructs Them Regarding the Crime of Peonage and Other Offenses Against Federal Statutes.

When the October term of the United States District was opened yesterday morning, it was found that there was not a sufficient number of grand jurors qualified to act. Judge M. M. Estee therefore ordered a special venire to issue to Marshal Hendry for fifteen additional men, returnable at 2 o'clock in the afternoon. The Marshal was punctual in making the return and, with the appointment of foreman made by the court and the election of a secretary by the grand jury, the entire panel sworn in consists of the following named twenty-three men:

W. O. Atwater, foreman; J. E. Galt, secretary; Geo. F. Fuller, J. E. Gmahlson, Andrew Adams, Walter H. Hyman, Alex. Illika C. B. Huston, E. R. Biven, W. A. Fetter, Luther S. Augst, H. Willgeroth, John Lucas, S. C. Dwight, John C. Lane, Lot K. C. Lane, C. M. V. Forster, Chas. J. Fitch, Wm. W. Hall, Chas. H. Ramsay, J. J. Waterman, Kirk B. Porter and Geo. F. Kluegel.

Upon their being sworn, the grand jurors were charged by Judge Estee as follows, the instructions being upon offenses for which there are informations and commitments docketed, besides other offenses against Federal laws that might be brought to their attention or of which any of themselves might be cognizant:

COURT'S CHARGE TO GRAND JURY

Gentlemen of the Grand Jury: You have been called here as members of the Grand Jury of the United States District Court of Hawaii during the term of court just opening and the duties which will devolve upon you are of grave importance. By the fundamental law of the United States, namely, the constitution thereof, it is prescribed that—

"No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger." Sec. 1, Article V.

You will therefore observe that no steps can be taken for the prosecution of any crime of the character indicated until your body shall have acted. The whole series of felonies belong to the class of infamous crimes mentioned. You will therefore note how indispensable to the administration of justice in criminal cases is the action of the grand jury.

SCOPE OF DUTIES.
You are officers of the United States and as such, deal only with offenses against the laws of the United States, or which are made by United States laws. You have nothing to do with offenses under the laws of the Territory of Hawaii.

Your jurisdiction, however, in the investigation of offenses made such by the laws of the United States, extends over the whole Territory of Hawaii, and you are to fairly and without fear or favor investigate all crimes within the Territory which come under that category.

I wish to say further to you in relation to the character of your duties, that the grand jury is designed not alone as a means of bringing to trial persons accused of crime upon just grounds, but it is also a means of protecting the citizen against unfounded accusations whether they proceed from the government or are prompted by individual enmities or personal passion. There is, therefore, a double duty cast upon you as grand jurors of this district; one is that duty to society to see that parties against whom there is just ground to charge the commission of a crime shall be held to answer thereto, and on the other side, a duty to the citizen to see that he is not subjected to prosecution upon erroneous accusations.

SECRECY ESSENTIAL.

Your sessions shall be secret. This is just. It would work a great hardship to any citizen against whom charges might be brought to you for investigation, if as a result thereof you should find them unfounded, and said charges had been made public.

You must examine all matters called to your attention by the Court; also all matters called to your attention by the United States District Attorney. You will also examine all cases of alleged violations of United States laws that may be brought to your attention and evidence presented thereon, aside from any matter that may be

brought before you either by the District Attorney or indicated in this charge.

You are not, however, to consider or examine the books or accounts of Federal officers; these matters are left to the heads of the departments to which these officers belong.

It may be possible that some of you have, within your personal experience, knowledge of the commission of a public offense against the laws of the United States or of facts which tend to show that such an offense has been committed. If you are possessed of any such knowledge, you should disclose it to your associates so that they may consider it.

If any attempt is made to influence your action as grand jurors, it will be your duty to immediately notify the Court. It is provided by Section 5405 of the Revised Statutes of the United States, that—

"Every person who attempts to influence the action or decision of any grand juror upon any issue or matter pending before such juror, or before the jury of which he is a member or pertaining to his duties, shall be punishable by a fine of \$100 or by imprisonment or by both."

PRESUMPTION OF INNOCENCE.

In considering the evidence presented to you in each case, you will remember that all persons, no matter what the charge against them may be, are presumed to be innocent until proven guilty. And to justify the finding of an indictment, you must be convinced so far as the evidence goes, that the accused is guilty; in other words, if in your judgment the evidence before you would if unexplained, and uncontradicted, warrant a conviction by a petit jury you should find an indictment.

The general government has selected the United States District Attorney to represent its interests in all prosecutions. He will at all times be ready and willing to aid you in your investigations. He will call and examine witnesses and if need be interpreters to assist you in your labors; but if you so desire you can call and examine witnesses of your own volition.

The District Attorney has no right to be present during your deliberations or when you vote; no one but members of the grand jury can be present at your deliberations or at your voting.

In your examinations you will hear and consider only legal testimony; mere hearsay testimony you will discard. And if in your investigations you find, or become convinced that there is evidence not produced which would explain away a charge presented to you, it will be your duty to get such evidence if it is possible to do so. I wish further to state to you that it requires the affirmative vote of at least twelve of your members to find an indictment.

CRIME OF PEONAGE.

Among the matters placed before you for investigation, there are likely to be certain offenses arising under Sections 5526 and 5527 of the R. S. U. S. known as the "peonage" statutes.

Section 5526 prescribes that—
"Every person who holds, arrests, returns or causes to be held, arrested, or returned, or in any manner aids in the arrest or return of any person to a condition of peonage, shall be punished by a fine of not less than one thousand nor more than five thousand dollars, or by imprisonment not less than one year nor more than five years or by both."

Section 5527 reads as follows—
"Every person who obstructs or attempts to obstruct or in any way interferes with or prevents the enforcement of the preceding section shall be liable to the pains and penalties therein described."

It should also be borne in mind that our Constitution is opposed to all forms of peonage, slavery or servitude. All men are free from the moment their feet rest on American soil, for our fundamental law and the acts of Congress passed in conformity therewith intend that neither slavery nor involuntary servitude shall exist anywhere in America. This constitutional prohibition applies with equal force to foreign as to American born people living in the United States. No man is too great or too small not to be bound or protected by it. This Republic rests upon the sacred principle that all men are born free and equal. Peonage is un-American. It matters not from what country the peon immigrates or what agreement he comes under, he cannot with impunity translate to our shores any form of servitude; nor can he implant here, unresisted by our laws, the principles peculiar to slavery or the customs of his own country. American law is designed to enforce all the personal rights due each human being in America and in that sense it teaches morality.

IMMORAL IMPORTATION.

It is further provided by Section 3

(Continued on page 3.)

ALL SERENE WITH JURY

A Contempt Case Could Not Be Got Up.

Kamuela was found guilty yesterday afternoon of assault with a weapon. Judge Gear sentenced him to be imprisoned at hard labor for eighteen months, the term being but six months less than the longest the law allows. Ella Long, who defended Kamuela by assignment of the court, had put the defendant on the stand as the sole witness for the defense and asked him but one question. This was if he stabbed the Japanese alleged to have been assaulted.

"I did not," was the answer.

Mr. Fleming for the Territory was met with objections to any cross-examination of the defendant which did not bear upon that simple denial of guilt, yet some questions objected to on that ground were allowed.

The jury retired at 12:25 and half an hour later called the bailiff to give them a fresh supply of blank ballots. They came into court after an absence of more than an hour and through Carl Willing as foreman announced that they could not agree. They had taken ten ballots and were divided eight to four. Judge Gear sent them down town for lunch, giving a gentle hint by remarking that it ought to be possible to reach a verdict under the evidence presented. At 3:30 the jury returned a verdict of guilty.

STORY OF THE CASE.

According to the evidence, Kamuela went into the house of a Japanese at Kamolihi, while the occupant was taking a siesta, and gathering up certain personal effects was about to make off with the bundle. At this juncture the Japanese awoke and, springing off his couch, exclaimed, "What's the matter, kanaka?" As the Japanese went to intercept the intruder's escape, Kamuela jabbed him in the shoulder with a jack-knife and ran out with the weapon in his hand. As he was pursued with hue and cry by the Japanese and his neighbors, Kamuela kept them at bay by brandishing the knife about him. When the pursuit became too hot he threw the knife away but it was found and he was captured virtually red-handed. His defense in court did not amount to a whit more than his formal plea of not guilty on arraignment excepting that it was a denial of guilt under oath.

THE SAME JURY.

The jury that convicted Kamuela was the one impaneled on Thursday, some of whose members struck duty on Friday morning owing to a news item in the Advertiser relating to their impaneling. As previously reported, Judge Gear requested the Attorney General to take such proceedings as he found necessary for calling the Advertiser to account for impeding justice in the case.

Attorney General Andrews reported with authorities yesterday morning. His investigation had confirmed his first impression that there was nothing actionable in the offending article. It had been his desire to be sure about it, as the jurors seemed to be aggrieved and were entitled to protection. There were Eastern cases in which juries were attacked with severe criticism and aspersions while trials were in progress, but in which the supreme courts held there was nothing actionable. In the present case it appeared the article at the worst was but a criticism of the defendant's attorney for what he did in connection with the impaneling of the jury. Mr. Andrews maintained that the jury must not be influenced by newspaper comment, citing the practice in some places of forbidding jurors the perusal of published reports of cases they were trying at the time. He stated that it was impossible there should be any hidden meaning in the offending article, saying of it:

"It mentions the race line and the color line, but there is nothing in it derogatory to the natives. Suppose the paper had said that there was a red-headed jury and some one should object. There would not be anything that could be taken up under the law."

Judge Gear asked what was to be done. The Attorney General replied that his department was ready to go on with the trial. Mr. Long stated that the defense was also ready to

proceed. This was all there was about it then, none of the jurors offering to speak, and the trial was forthwith resumed. In his charge to the jury, however, Judge Gear briefly instructed them that they were not to consider any publications or newspaper comments.

THE COURT HELPLESS.

Judge Gear probably welcomed the way the contempt proceedings terminated. Under his own recent delivrance he is absolutely powerless to enforce a penalty for that offense. An unpaid fine would make the offender liable to imprisonment in Oahu prison, so that if the amount was but a dollar it would be an "infamous" punishment. Therefore, before Judge Gear could have the editor of the Advertiser landed in prison, the case would have to be investigated by the grand jury. As contempt is not an indictable offense the grand jury would not know what to do with the case. Even if one threw a brick at the Judge in open court, he could not protect himself by summary process of contempt.

LONG CHAMBERS CALENDAR.

Judge De Bolt, as presiding Judge at Circuit Court chambers this week, had a long calendar yesterday.

On the report of W. A. Wall, commissioner in the partition case of M. F. Scott et al. vs. E. N. Philpo et al., the court granted leave to sell the property at public auction, at an upset price of \$5,000, after due notice by newspaper and posters. W. C. Achi for the commissioner; Castle & Withington and Enoch Johnson, separately, for certain defendants; J. A. Magoon, L. A. Dickey and John Greig, each for himself.

In the matter of the estates of H. F. Gibbs and Clara Schneider, the orders for hearings made by Judge Gear were rescinded for the reason that his clerk had failed to advertise them as directed. New orders were signed, returnable November 16. Atkinson & Judd appeared for the administrator.

In the matter of the estate of F. I. Cutter, on motion of F. Andrade a continuance was ordered for the purpose of taking testimony by commission in Japan.

A. Frank Cooke was appointed administrator of the estate of Walter Lee under bonds of \$1800. The estate consists of an expectancy of \$700 from the Ancient Order of Foresters, \$600 in bank, household furniture, horse and buggy, yacht, etc., valued at \$400. His heirs at law are a widow, two adult and two infant children. Stewart appeared for the petitioner.

Albert Barnes vs. C. R. Collins, bill for dissolution of partnership and accounting, was continued indefinitely. W. A. Whiting and C. E. Clemons for plaintiff; W. T. Rawlins for defendant.

Foreclosure of mortgage was ordered in the case of Mary E. Foster vs. Lum Kim, trustee et al. P. J. Kellett, Jr., being appointed commissioner of sale and publication of notice ordered in the Advertiser and a Chinese paper. Date of sale will be set in decree. E. A. Mott Smith for plaintiff; defendants in default.

In the matter of the guardianship of Kaaua, now deceased, the account of C. P. Laukea, guardian, was approved, excepting an overcharge of commission, \$11.40, and he ordered discharged upon paying over the balance to the administrator. W. A. Whiting for guardian; J. J. Dunne for administrator.

The C. R. Bishop trust accounts were referred to George Lucas as master.

Motions to dismiss the appeals in the cases of Hawaiian Electric Co. against W. C. King and King Bros. were denied, the motions of plaintiff for leave to amend notices of appeal being granted. Smith & Lewis for plaintiff; C. W. Ashford for defendant.

NEW TRIAL ORDERED.

Judge Robinson yesterday set aside the verdict in the suit of J. C. Axtell vs. H. E. Hendrick, which awarded the plaintiff \$5000 damages against the defendant for malicious prosecution. He regarded the amount of damages outrageous, a search of many cases of the kind showing no verdict for damages approaching it. A new trial was ordered and further proceedings were assigned to Judge De Bolt.

At the outset of the hearing a motion to strike the motion for a new trial from the files was overruled. After the decision, to which plaintiff noted exceptions, plaintiff moved for an order requiring defendant to furnish additional security. This was set for hearing on Wednesday.

Another motion on file is for an attachment against the property of defendant, on the grounds that H. E. Hendrick, two days after the verdict, sold his property to C. M. Lovested for \$5500, of which \$1000 was cash and the balance secured by a note or notes, that he was secreting his property, also damaging and wasting it, and that he was about to leave the Territory.

C. C. Bittling appeared for plaintiff, and Thomas Fitch for defendant. Mr. Fitch was on crutches owing to his recent attack by inflammatory rheumatism. He stated that he intended leaving for San Francisco today, but would return in January to attend to his cases here.

A temporary injunction was granted by Judge De Bolt, under a bond in \$250 to Hendrick by Axtell with E. O. White as surety, restraining Hendrick from disposing of his property subject to execution.

POSSESSION APPEAL.

Pang Chong has appealed from judgment in the Honolulu District Court against him and in favor of the Board of the Hawaiian Evangelical Association and R. Maka, for summary possession of a piece of land on the western corner of Beretania and Smith streets, Honolulu, and costs of court. Defendant was shown to have been in arrears of rent as lessee and failed to pay the same upon demand made repeatedly.

ERUPTION A SCENE OF INDESCRIBABLE SPLENDOR

No Decrease in Activity of the Mauna Loa Crater, But Everything Is Confined to the Summit Opening.

(BY WIRELESS TELEGRAPH—RECEIVED 9 P. M.)

Hilo, Oct. 12.—There is no increase in the fire on the summit of Mauna Loa. The scene from Hilo Sunday night was one of indescribable grandeur. As yet there is no flow of lava. Activity is confined to the summit crater. Four different parties have gone up from here and the first is expected to return Wednesday. There is no decrease in activity since the outbreak.

STACKER

Earlier messages from Hawaii yesterday indicated that the volcano was increasing in activity, and passengers on steamers along the Kona coast witnessed a magnificent display upon Mauna Loa's summit. The following message was received at the Inter-Island Navigation Company's offices from Capt. Mosher of the steamer Iwalani.

"Kona, Oct. 12, 1903.

"Great activity Mokuaweoweo. Kilauca smoking. Grand display visible from steamer along the coast."

The Iwalani carried a special party from Honolulu, which was to attempt the ascent of Mauna Loa to view the eruption at close range. It was their intention to disembark at Honuapo Saturday and go overland to the Volcano House, whence the party would leave for Mokuaweoweo crater.

A dispatch received yesterday indicates that although the eruption is a magnificent one, yet the lava is still bubbling within the crater and has not begun to flow down the mountain in any great quantity, but an overflow, especially on the Kona side, is expected at any time.

The horizon in the general direction of Maui and Hawaii last evening seemed to indicate the presence of smoke. It was dull and hazy, while above the sky was intensely blue.

IT LOOKS MORE PEACEABLE IN THE FAR EAST

(ASSOCIATED PRESS CABLEGRAMS.)

WASHINGTON, Oct. 13.—The Russian embassy is not alarmed over the situation and believes that the dispute with Japan will be settled amicably.

YOKOHAMA, Oct. 13.—The Russian force at Newchwang has been increased.

LONDON, Oct. 13.—The alarmist rumors from the Far East, predicting war between Russia and Japan, are unconfirmed.

PARIS, Oct. 13.—The Japanese Minister declares that diplomatic relations between Japan and Russia are cordial.

LONDON, Oct. 13.—Vice Admiral Noel has been confirmed as commander of the British naval forces on the China station.

Vice Admiral Noel won a knighthood in 1898 during the difficulties at Crete. He is a very important man in the British navy, having held such important commands as those of the Home Squadron and Mediterranean fleet; has been a Lord of the Admiralty; and for two years was an aide-de-camp to the late Queen Victoria.

BALTIMORE, Oct. 13.—Archbishop Kain of St. Louis is dying.

Archbishop Kain is only in his sixty-third year. He has been thirty-seven years in the priesthood, and twenty-eight years a bishop. Upon the death Archbishop Kendrick of St. Louis in 1896 he succeeded him.

NEW YORK, Oct. 13.—The floods at Paterson and Passaic, N. J. have done damage to the amount of \$4,000,000. Thousands have been deprived of work.

SOFIA, Oct. 13.—Desperate fighting is reported from Sdezli. The insurgents have killed 560 Turks with a loss of twenty-five.